

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. 1324a Proceeding
	)	Case Number 93A00143
JACKSON TREE SERVICE, INC.,	)	
A Missouri Corporation,	)	
Respondent.	)	

DECISION AND ORDER OF THE ADMINISTRATIVE LAW JUDGE

ADMINISTRATIVE LAW JUDGE: Joseph E. McGuire

Appearances: Joseph R. Dierkes, General Attorney, for the  
Immigration and Naturalization Service

Darwin Portman, Attorney For Respondent

DISCUSSION AND DECISION

This proceeding was initiated before the Office of the Chief Administrative Hearing Officer by the filing of a Complaint Regarding Unlawful Employment by the Immigration and Naturalization Service (Complainant) against Jackson Tree Service, Inc. (Respondent), alleging violation of the statutory prohibition against unlawful employment of aliens not authorized to be employed in the United States, and failure to comply with the statutory verification requirements.

By a document in the form of a Settlement Agreement, pursuant to 28 CFR § 68.14, which Settlement Agreement is incorporated herein by reference as if fully set out, the parties have tendered an agreed disposition which forms the basis of this Decision and Order.

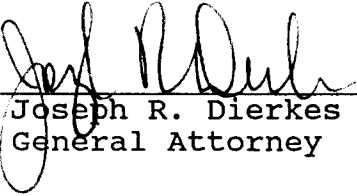
FINDINGS OF FACT

Based on the Settlement Agreement filed herewith, the allegations contained in all Counts of the Complaint, filed previously herein, are accepted as true.

Approved as to form:

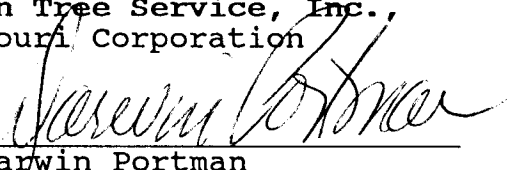
United States of America  
Immigration and Naturalization  
Service

By: \_\_\_\_\_

  
Joseph R. Dierkes  
General Attorney

Jackson Tree Service, Inc.,  
A Missouri Corporation

By: \_\_\_\_\_

  
Darwin Portman  
Attorney For Respondent

## CONCLUSIONS OF LAW

The parties having stipulated that an Order assessing fines shall be entered on all Counts of the Complaint, filed previously herein, and having tendered a Settlement Agreement as reflected in this Decision and Order, it is concluded that the Settlement Agreement is fair and satisfactory, and there is no reason not to accept it, within the contemplation of 28 CFR § 68.14.

On the basis of the Settlement Agreement, including the findings of fact above, it is concluded that the Respondent has violated 8 U.S.C. 1324a(a)(1)(A), Section 274A(a)(1)(A) of the Immigration and Nationality Act, in that the Respondent hired certain individuals, knowing that they were aliens not authorized to be employed in the United States.

It is further concluded that the Respondent has violated 8 U.S.C. 1324a(a)(1)(B), Section 274A(a)(1)(B) of the Immigration and Nationality Act, in that Respondent has failed to comply with the verification requirements of that section of law.

### ACCORDINGLY, IT IS HEREBY ORDERED:

1. That the Respondent cease and desist from violating the provisions of Section 274A(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1324a(a)(1).


2. That the Respondent pay a total civil money penalty in the sum of FIVE THOUSAND DOLLARS (\$5,000.00) for the violations set out in the Complaint.

3. That this Decision and Order shall have the same force and effect as a Decision and Order made after a full administrative hearing.

4. That as provided in 28 CFR Part 68, this Decision and Order shall become the Order of the Attorney General unless within thirty (30) days from this date the Chief Administrative Hearing Officer shall have modified or vacated it.

SO ORDERED:

Dated this 24th day of November, 1993.

  
\_\_\_\_\_  
Joseph E. McGuire  
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 1993, I have served copies of the foregoing Decision and Order of the Administrative Law Judge to the following persons at the addresses shown, in the manner indicated:

Office of Chief Administrative Hearing Officer  
Skyline Tower Building  
5107 Leesburg Pike, Suite 2519  
Falls Church, Virginia 22041  
(original hand delivered)

Michael C. McGoings, Esquire  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 7048  
Washington, D.C. 20536  
(one copy sent via regular mail)

Joseph R. Dierkes, Esquire  
Immigration and Naturalization Service  
9747 North Conant Avenue  
Kansas City, Missouri 64153  
(one copy sent via regular mail)

Darwin Portman, Esquire  
120 South Central Avenue  
Suite 1200  
St. Louis, Missouri 63105  
(one copy sent via regular mail)



Cathleen L. Lascari  
Legal Technician to  
Joseph E. McGuire  
Administrative Law Judge  
Department of Justice  
Office of the Chief Administrative  
Hearing Officer  
5107 Leesburg Pike, Suite 2519  
Falls Church, Virginia 22041  
(703) 305-1043

IN THE MATTER OF:  
JACKSON TREE SERVICE, INC.,  
A Missouri Corporation  
INS FILE NUMBER STL-91-12213

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") is made and entered into by and between the United States Department of Justice, Immigration and Naturalization Service (hereinafter "INS"), and Jackson Tree Service, Inc., a Missouri Corporation (hereinafter "Respondent"). INS and Respondent shall be collectively referred to herein as "the Parties."

WHEREAS, the INS has issued on April 21, 1993, a Notice of Intent To Fine (Form I-763) against Respondent under Section 274A of the Immigration and Nationality Act (hereinafter "the Act"), in a case denominated "In The Matter of Jackson Tree Service, Inc.," File Number STL-91-12123; and

WHEREAS, INS has stated in the Notice of Intent To Fine that it intends to order the Respondent to pay a fine in the amount of ELEVEN THOUSAND TWO HUNDRED EIGHTY DOLLARS (\$11,280.00), concerning Respondent's violations of the employment and record-keeping provisions of the Act; and

WHEREAS, on May 20, 1993, Respondent requested a hearing on the Notice of Intent To Fine; and thereafter, on or about July 26, 1993, INS filed a Complaint regarding unlawful employment with the Office of the Chief Administrative Hearing Officer (hereafter "OCAHO"); and

WHEREAS, the Parties to this Agreement desire to fully and finally settle the issues raised in the Notice of Intent To Fine,

NOW, THEREFORE, in consideration of the mutual promises and undertakings and covenants contained herein, and intending to be bound by this Agreement, THE PARTIES AGREE AS FOLLOWS:

1. That the Notice of Intent To Fine and Complaint, and the allegations contained therein, are incorporated herein as though fully set forth. For the purpose of this Agreement, Respondent stipulates that the allegations and charges set out in the Notice of Intent to Fine and the Complaint are true.

2. That the Respondent understands that pursuant to section 274A(e)(4) of the Act, 8 U.S.C. § 1324a(e)(4), and 8 C.F.R. § 274a.10(b), employers determined to have knowingly hired an unauthorized alien or to have continued to employ an unauthorized alien in the United States in violation of law may be subject to civil money penalties as follows:

- a. First offense -- not less than \$250.00 and not more than \$2,000.00 for each unauthorized alien;
- b. Second offense -- not less than \$2,000.00 and not more than \$5,000.00 for each unauthorized alien; and
- c. More than two offenses -- not less than \$3,000.00 and not more than \$10,000.00 for each unauthorized alien.

That the Respondent understands that the violations set forth in the Notice constitute a first offense and that future violations of Section 274A of the Act by the Respondent will be treated as a second or subsequent offense.

3. That upon acceptance and approval of this Agreement by OCAHO, the Parties agree that OCAHO shall issue a Final Decision and Order imposing a fine in the sum of FIVE THOUSAND DOLLARS (\$5,000.00). Said Final Decision and Order shall have the same force and effect as an order made after a full hearing.

4. That the payment terms with which the Respondent must comply are as follows:

- A. Two Thousand Dollars (\$2,000.00) to be paid within thirty days of the date of issuance of the Final Decision and Order described in Paragraph 3.
- B. An additional One Thousand Dollars is to be paid within sixty days of the date of issuance of the Final Decision and Order described in Paragraph 3.
- C. An additional One Thousand Dollars is to be paid within ninety days of the date of issuance of the Final Decision and Order described in Paragraph 3.
- D. An additional One Thousand Dollars is to be paid within one hundred and twenty days of the date of issuance of the Final Decision and Order described in Paragraph 3.

5. That payments shall be made payable to the "Immigration and Naturalization Service" and mailed to:

Office of the District Counsel,  
U.S. Immigration and naturalization Service  
9747 N. Conant Avenue  
Kansas City, MO 64153

6. That if Respondent fails to comply with the payment terms stated in paragraph 4., the Respondent further agrees that ten dollars (\$10.00) per month shall be assessed as a reasonable administrative handling charge for each payment in default. In addition, for any default which continues for more than 30 days, a penalty charge of six per cent (6%) per annum shall be assessed on the unpaid balance.

7. That if Respondent fails to comply with the payment terms stated in paragraph 4., the Respondent agrees that the full amount stated in the Final Decision and Order described in paragraph 3., less payment actually made, will become immediately due and payable to the INS, at the option of the INS.

8. That the Attorney General, pursuant to Section 274A(e)(8) of the Act, is authorized to file suit in any appropriate district court to seek compliance with said Final Decision and Order, should Respondent fail to make payment in compliance with this Settlement Agreement.

9. That in the event of any action to enforce any of the payment terms or conditions stated in paragraph 4, the INS shall be entitled to recover the reasonable attorney's fees incurred.

10. That the Parties waive any further procedural rights before OCAHO in this proceeding, and the Respondent specifically waives the right to renew any request for a Hearing before an Administrative Law Judge pursuant to the provisions of Section 274A(e)(3) of the Act. The Parties waive any right to challenge or contest the validity of any Order entered in accordance with this Agreement.

11. That the Respondent will cease and desist from any further violations of Sections 274A(a)(1)(A) or 274A(a)(2) of the Act.

12. That nothing in this Agreement shall be construed as relieving the Respondent of liability for any violations of Section 274A of the Act, other than those violations set forth in the Notice of Intent to Fine.

13. That the INS releases and discharges the Respondent, from any further penalties under section 274A of the Act for the violations set forth in the Notice of Intent to Fine, and this Agreement shall constitute a complete release from and bar to any and all causes of action, claims, rights, liens, or subrogated interests, by reason of or arising from the violations set forth in the Notice of Intent to Fine;

14. That, subject to the exception previously noted in paragraph 9 with respect to collection actions involving the Respondent's default in making installment payments, each Party shall bear its own costs, attorney's fees and any other expense incurred by such Party in this matter.

15. That this Agreement shall be governed by, and construed in accordance with, the laws of the United States and the State of Missouri. Should any provision of this Agreement be declared or determined by any Court or legal body to be illegal or invalid, the validity of the remaining parts, terms and provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

16. That this Agreement shall be binding upon and inure to the benefit of, and be enforceable by and against the INS and the Respondent and their heirs, assigns and successors in interest and all parent, subsidiary, and affiliated firms, corporations and entities.

17. That this Agreement contains the entire understanding of the Parties and fully supersedes any and all prior agreements and understandings with respect to the subject matter hereof. There have been no representations, express or implied, concerning the subject matter hereof, except as contained herein. Further, this Agreement may be amended or modified only by a written instrument duly executed by each of the Parties.

18. Each party represents and warrants that this Agreement has been duly approved and authorized by such Party and constitutes a binding obligation of such party, and that the officer or official signing this Agreement is authorized by said party to sign on its behalf.

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION & NATURALIZATION SERVICE

Date: 10/14/93

By: Ron Sanders  
RON SANDERS  
District Director

Approved as to Form:

Joseph R. Dierkes  
Joseph R. Dierkes, General Attorney

JACKSON TREE SERVICE, INC.,  
A Missouri Corporation

Date: Nov 12, 1993

By: Lawrence Jackson  
Name: Lawrence Jackson  
Title: President

Approved as to Form:

Darwin Portman  
x Darwin Portman, Attorney for  
Respondent